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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/419,901	10/18/1999	JENNIFER E. VAN EYK	1997-023-04U	2043

26259 7590 03/22/2002

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EXAMINER
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COOK, LISA V

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 03/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/419,901

Applicant(s)

VAN EYK ET AL.0

Examiner

Lisa V. Cook

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-50 and 56-68 is/are pending in the application.
- 4a) Of the above claim(s) 42-50 and 56-68 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-50 and 56-68 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Amendment Entry***

1. Applicants' response to the Notice to Comply with Requirements for Patent Application containing Nucleotide Sequences and/or Amino Acid Sequence in paper #12 filed 12/18/01 is acknowledged. The instant application is in compliance.

### ***Election/Restrictions***

2. Applicant's election with traverse of Group I (claims 1-41) in Paper No. 10 is acknowledged. Group I comprises claims directed to amino acid sequence residues, see claims 29, 30, 32, and 33. The amino acid sequences presented in claims 29, 30, 32, and 33 must be identified by specific sequence identification numbers (i.e. seq. id. nos. 1, 2, 4, 5, etc.). The different amino acid sequences are directed to patentably distinct structures requiring restriction. Examiner apologizes for any inconvenience this may cause applicant.

3. Restriction to one of the following inventions is required under 35 U.S.C. 121: Claims 1-41, are drawn to a method of assessing muscle damage in a subject, classified in class 436, subclass 536, for example. This group includes patentable distinct inventions, specifically amino acid sequences in claims 29, 30, 32, and 33. Therefore the following restriction is imposed:

A. Method of assessing muscle damage in a subject utilizing the amino acid sequence residue of claim 29, classified in class 530, subclass 300/350, for example.

B. Method of assessing muscle damage in a subject utilizing the amino acid sequence residue of claim 30, classified in class 530, subclass 300/350, for example.

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C. Method of assessing muscle damage in a subject utilizing the amino acid sequence residue of claim 32, classified in class 530, subclass 300/350, for example.

D. Method of assessing muscle damage in a subject utilizing the amino acid sequence residue of claim 33, classified in class 530, subclass 300/350, for example.

4. The inventions are distinct, each from the other because of the following reasons:

The invention of Group A-D (claims 29, 30, 32, and 33) are drawn to a plurality of disclosed patentably distinct inventions (peptides comprising materially different amino acid sequences as evidence by separate sequence residues/SEQ ID Numbers). The separate polypeptides bear distinct structural or biochemical properties as substantiated by the separate SEQ ID numbers and having different binding epitopes. **Therefore, each disclosed patentably distinct peptide mimotope is considered a separate invention.** See Official Gazette 1232 OG 242(116) march 21, 2000. Therein the O.G. notice permits the examiner to examine up to ten sequences per application based on the use of US PTO resources. Resources are now stretched to the limit, such that only one sequence should be searched per application. It is recognized that although the search for the inventions may overlap they are not totally co-extensive, where by the search for one would fully encompass the search for the others.

Because these inventions are distinct for the reasons given above and the search required for each sequence is not mutually inclusive (i.e. the search for one invention is not required for the other inventions) restriction for examination purposes as indicated is proper.

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5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. Please note that the classifications in the restriction are illustrative only and **do not** represent all the classes and subclasses which must be searched for each invention; nor is the search limited to issued US patents, but rather includes foreign patents and applications as well as literature searches.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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8. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO fax center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1641 Fax number is (703) 308-4242 which is able to receive transmissions 24 hours/day, 7 days/week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa V. Cook whose telephone number is (703) 305-0808. The examiner can normally be reached on Monday - Friday from 7:00 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le, can be reached on (703) 305-3399.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.



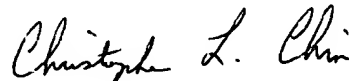
*Lisa V. Cook*

*Patent Examiner*

*Art Unit 1641*

*CM1-7B17*

*3/20/02*



CHRISTOPHER L. CHIN  
PRIMARY EXAMINER  
GROUP 1800-1641